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Decision 02-07-044 July 17, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Whether Pacific Gas and Electric Company, Southern California SCE Company, San Diego Gas & Electric Company, and their respective holding companies, PG&E Corporation, Edison International, and Sempra Energy, respondents, have violated relevant statutes and Commission decisions, and whether changes should be made to rules, orders, and conditions pertaining to respondents' holding company systems.	I.01-04-002 (Filed April 3, 2001)
In the Matter of the Application of Southern California SCE Company (U 338-E) for authorization to implement a plan of reorganization which will result in a holding company structure.	Application 87-05-007 (Filed May 6, 1987)
In the Matter of the Application of San Diego Gas & Electric Company (U 902-M) for authorization to implement a Plan of Reorganization which will result in a holding company structure.	Application 94-11-013 (Filed November 7, 1994)
In the Matter of the application of Pacific Gas and Electric Company (U 39 M) for authorization to implement a Plan of Reorganization which will result in a holding company structure.	Application 95-10-024 (Filed October 20, 1995)
Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for approval of a Plan of Merger of Pacific Enterprises and Enova Corporation with and into B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub"), the wholly owned subsidiaries of a newly created holding company, Mineral Energy Company.	Application 96-10-038 (Filed October 30, 1996)

ORDER MODIFYING AND DENYING REHEARING OF DECISION (D.) 02-01-037

On February 13, 2002, PG&E Corporation ("PG&E Corp.), Edison International ("EIX"), and San Diego Gas and Electric Company jointly with Sempra Energy ("SDG&E/Sempra") (collectively "holding companies") filed applications for rehearing of Decision (D.) 02-01-037 ("Decision"). The Utility Reform Network ("TURN") filed a response to the holding companies' applications.

D.02-01-037 denies the holding companies' motions to be dismissed from Investigation (I.) 01-04-002 ("Holding Company OII"), which was opened in April of last year in order to investigate the holding companies' compliance with the conditions the Commission imposed when they were formed. The Decision concludes that the Commission retains jurisdiction over the holding companies to enforce the holding company conditions in Commission proceedings.

We have carefully considered all the arguments presented by the holding companies and are of the opinion that no grounds for rehearing have been demonstrated. We will, however, modify the Decision to delete the conclusions regarding the addition or modification of holding company conditions. Since the Commission has no immediate proposal to change the conditions, the Commission will defer resolution of this issue until the Commission is actually considering changes to the existing conditions.

I. JURISDICTION OVER EXISTING CONDITIONS

The holding companies[1] argue that the Commission does not have jurisdiction to enforce the holding company conditions against them because the Commission derives its jurisdiction from the California Constitution and the Legislature. The holding companies' point that our jurisdiction over non-utilities must stem from a Constitutional or Legislative grant is well-taken. While we agree that the Public Utilities Code must be the ultimate source for our continuing jurisdiction over the holding

[1] Although one non-holding company, SDG&E, co-filed an application for rehearing, the rehearing applicants are referred to collectively as the holding companies. In addition, reference to the "holding companies' arguments" does not necessarily mean that all the rehearing applicants made the argument.

company conditions, the holding companies are mistaken in their contention that the Legislature has not provided this authority to the Commission. We conclude that the Code confers continuing jurisdiction on the Commission to enforce the holding company conditions.

Although the holding companies contend that the Commission cannot have jurisdiction over non-utilities, that contention is not accurate. More accurately, *in the absence of legislation otherwise providing*, the Commission's jurisdiction is limited to public utilities, as the holding companies state in their applications for rehearing. (See, e.g., Sempra App., at 2.) Although the holding companies also cite broad language that indicates the Commission can only regulate public utilities (*Television Transmission, Inc. v. Public Utilities Comm.* (1956) 47 Cal.2d 82, 84), the Legislature indisputably grants occasional authority to the Commission over non-utilities. (See, e.g., Pub. Util. Code §§ 314 (b)[2] [inspection of holding company records], 394.1 [jurisdiction over energy service providers], 739.5 [jurisdiction over mobile home parks].) Further, as the Decision notes, the Code clearly grants the Commission the ability to enforce its authority over non-utilities. (§ 2111.) No arguments have been raised that such grants are in any way beyond the authority of the Legislature.

In this case, the Legislature has granted the Commission the specific authority to enforce the holding company conditions. As we concluded in the Decision, the Commission had jurisdiction to impose the holding company conditions pursuant to Public Utilities Code sections 818 and 854. (Decision, CL 5, at 25.) The Commission's continuing jurisdiction to enforce the conditions also stems from those Code sections.

[2] Unless otherwise noted, all statutory references are to the Public Utilities Code.

Notably, the different holding companies were approved pursuant to either section 818 or 854, and section 854 was amended after some approvals and before others.[3] We have sufficient authority pursuant to those Code sections to retain jurisdiction over all the holding company conditions we have imposed.

Section 818 provides that no public utility may issue stocks, or other forms of indebtedness, without obtaining prior approval from the Commission. This authority is bolstered by section 819, providing that the Commission may hold hearings and examine books and witnesses in determining whether to grant section 818 approval. Section 819 further provides that the Commission may modify the utility's request, deny it, or "grant it subject to such conditions as it deems reasonable and necessary."

As it existed at the time of the Edison holding company application and the original SDG&E holding company application section 854 provided that no person or corporation could acquire control of a public utility without first securing authorization from the Commission. Public utilities were forbidden from assisting in violations of that provision. Section 854 was subsequently amended, in relevant part, to require the Commission to consider certain public interest factors prior to approving an application, and to require the Commission to "provide mitigation measures to prevent significant adverse consequences which may result." (§ 854 (c)(8).) Section 856 was also added specifically providing that any employee or officer of a public utility, subsidiary, affiliate or holding company who violates or abets a violation of section 854 is guilty of a misdemeanor.

Additional Commission authority is provided by section 701. Section 701 provides that the Commission "may do all things… which are necessary and convenient,"

[3] SDG&E's original application to form a holding company was filed pursuant to section 854, concerning change of ownership or control. (D.86-03-090.) That holding company was not formed, but the Decision was referenced in the subsequent holding company decisions. SDG&E then applied to form a holding company pursuant to section 818, concerning issuance of stock or indebtedness, and formed that holding company. (D.95-12-018.) Subsequently, SDG&E's holding company, Enova, applied to merge with Pacific Enterprises pursuant to section 854 to form Sempra. (D.98-03-073.) Edison applied to form its holding company pursuant to section 854 (D.88-01-063), and PG&E applied to form its holding company pursuant to section 818 (D.96-11-017).

in the exercise of its authority over public utilities whether or not they are specifically designated in the Code. The holding companies correctly note that section 701 cannot grant the Commission authority that is contrary to other legislative directives. (*Assembly of the State of California v. Public Utilities Comm.* (1995) 12 Cal.4th 87, 103.) However, when the authority sought is not contrary to other statutes, and is "cognate and germane" to utility regulation, the Commission's authority pursuant to section 701 has been liberally construed. (*Consumers Lobby Against Monopolies v. Public Utilities Comm.* (1979) 25 Cal.3d 891, 905-6.) Section 701 provides the Commission with flexibility in exercising its existing statutory authority.

When read in conjunction with section 701, sections 818, 819, and 854 provide the Commission with continuing jurisdiction over the holding companies for the limited purpose of monitoring and enforcing the holding company conditions. Although the holding companies were approved pursuant to either 818 or 854, Commission authority over these transactions stems from both of these statutes, as the transactions involved were substantially similar. Section 819 allows the Commission to impose conditions it deems reasonable and necessary on stock transactions, and section 854 now requires the Commission to impose mitigation to prevent adverse effects resulting from changes in control. Although the earlier version of section 854, the basis for the Edison holding company approval, did not contain the mitigation requirement, no one has questioned the Commission's earlier authority to fashion section 854 conditions, as we did without challenge in approving the Edison holding company.

As the Decision notes, its makes little sense to grant the Commission authority over protecting the public interest through conditions and mitigation measures, but not allow it to exercise its traditional functions to oversee and enforce those measures. (Decision, at 8.) Moreover, section 819 allows the Commission to impose conditions it deems necessary and reasonable. This provision allows us a good deal of discretion regarding how to protect the public interest in these transactions. Further, the Commission was clear from the outset that the holding companies would be required to "submit to the Commission's fullest authority if they in fact intend to consummate the

transactions…" (*Re SDG&E*, D.86-03-090, (1986) 20 Cal. P.U.C. 2d 660, 686.) Although that holding concerned the earliest SDG&E holding company application, the Commission used that decision as a basis for the other holding company decisions. (See, e.g., *Re Southern California Edison*, D.88-01-063, (1988) 27 Cal. P.U.C. 2d 347, 362.)

In addition, there is no support for interpreting the statutes as the holding companies suggest, allowing the Commission contractual, but not regulatory, authority over the holding company conditions. There is no indication in the statutory language indicating that any type of contract was envisioned by the Legislature. The section 819 language allowing the Commission to subject approvals to conditions that the Commission deems necessary and reasonable does not sound at all contractual. There is no reference to any type of agreement. Rather, the statute is fairly explicit that the conditions are solely up to the Commission to determine. Similarly, the authority to "provide mitigation measures" to prevent adverse consequences contained in section 854 indicates that the Commission has unilateral authority.

The holding companies' other arguments narrowly interpreting the Code sections are also unconvincing. EIX argues that if the Commission had continuing jurisdiction over the holding companies, section 314 (b), which grants the Commission limited inspection and discovery authority over holding companies records, would have been unnecessary. This argument assumes that the Commission has concluded that it has unlimited authority over the holding companies and that other statutory grants of authority over holding companies are superfluous. This is clearly not the case. The Commission's authority over utility holding companies is limited to what has been granted by the Legislature. Section 818, 819, and 854 jurisdiction over the holding companies is limited to conditions relevant to the holding companies' formation. It is therefore not superfluous for the Legislature to grant the Commission other types of limited jurisdiction over the holding companies. In any event, there are many cases of overlapping grants of authority that are found in the Public Utilities Code, so if there were an overlap this would not show that sections 818 and 854 do not confer limited jurisdiction over holding companies.

PG&E Corp. claims that because PG&E Corp. was approved pursuant to section 818 rather than section 854, the Commission cannot claim jurisdiction over the holding company. PG&E Corp. appears to believe that the section 819 conditions can only concern the issuance of stock or indebtedness and not the holding company itself. PG&E Corp.'s argument fails for a number of reasons. First, although the approval was conducted pursuant to section 818, clearly the Commission's authority over the subject matter of holding company formation stems from both sections 818 and 854, regardless of which statute governed the approval process. Also, even though, as PG&E Corp. notes, section 818 does not mention holding companies, PG&E Corp. has no basis to believe that the Commission cannot impose conditions on those holding companies pursuant to section 818. Section 819 gives the Commission broad latitude to subject section 818 approvals to whatever conditions "it deems necessary and reasonable." This provision does not contain the restrictions PG&E Corp. reads into the statute. Moreover, whether or not PG&E Corp. believes those conditions are contractual, there is no question that the Commission imposed conditions on the holding companies in a section 818 proceeding. PG&E did not challenge the Commission's ability to do so.

In a mistaken interpretation of Commissioner Brown's Concurrence, Sempra/SDG&E contends that the section 854 reference to control does not apply to the Commission's control or subject matter jurisdiction. Sempra/SDG&E has missed the point of the Concurrence entirely. The Concurrence reasons that the Commission had the ability to retain jurisdiction, not because of the "control" language, but because section 854 leaves it to the Commission's discretion to fashion mitigation measures to protect the public interest. (§ 854 (c).) Section 819 also allows the Commission to decide what conditions are reasonable and necessary, although the Concurrence did not refer to that section. The Concurrence therefore correctly concludes that the Legislature gave the Commission enough authority to allow it to decide to retain jurisdiction to enforce the holding company conditions.

For the foregoing reasons, the holding companies' arguments that we do not have continuing jurisdiction over them to enforce the conditions we imposed lack merit.

Because we have jurisdiction based on sections 818, 819 and 854, it is not necessary to discuss the holding companies' other arguments concerning the remainder of the reasoning in the Decision. The statutory basis for the Commission's jurisdiction provides sufficient grounds for us to deny the holding companies' applications for rehearing. No further discussion of the holding companies' arguments on jurisdiction over the existing conditions is warranted.

II. JURISDICTION TO ADD OR MODIFY CONDITIONS

The holding companies also challenge the Commission's assumption of jurisdiction to "modify or add" to the holding company conditions in order to protect the public interest. (Decision, at 2.) The Commission has no immediate plans to modify or add to the conditions that were originally imposed on the holding companies. Moreover, to the extent changes are necessary, the modified conditions may only pertain to the utilities rather than the holding companies. For these reasons, we will defer consideration of the issue of our jurisdiction to modify conditions or impose new conditions until such time as we are actually considering taking those actions. If, in the future, the Commission is considering modifications to the existing conditions, the holding companies will have notice and an opportunity to be heard on the issue of our jurisdiction. Although we are not concluding that the holdings are in error, we will delete the statements in the Decision that conclude that the Commission has jurisdiction to modify or add to the holding company conditions, because that jurisdiction is not at issue at this time.

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THEREFORE IT IS ORDERED that:

1. The last sentence of the second paragraph on page 2 of the Decision is deleted.
2. Section C. on page 20 of the Decision is deleted.
3. Conclusion of Law 6 on page 25 of the Decision is deleted.
4. Rehearing of D.02-01-037, as modified herein, is denied.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I abstain,

/s/ Michael R. Peevey
Commissioner